

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

**THOMAS H. KRAKAUER,  
on behalf of a class of persons,**

**Plaintiff,**

**Civil Action No. 1:14-cv-00333-CCE-JEP**

**v.**

**DISH NETWORK, L.L.C.,**

**Defendant.**

**THE PARTIES' JOINT AGENDA  
FOR THE DECEMBER 12, 2016 PRETRIAL CONFERENCE**

The parties jointly submit this agenda in response to the Court's directive that they provide a joint agenda of matters that require resolution or discussion at the December 12, 2016 pretrial conference (Doc. 242):

**1. Verdict sheet**

- a. DISH: Agency (issues of scope of authority and acting adversely to a principal's interests)
- b. DISH: the Court's proposed Questions 2 and 3 do not allow the jury to find for Dr. Krakauer only, and further, Question 3 does not permit the jury to find for no class members on the IDNC claim.
- c. Categorical challenges
  - i. DISH: Categorical challenges based on telephone numbers identified as "cellular" or "possibly cellular" should be combined
  - ii. DISH: Risk of inconsistent findings with respect to DISH's categorical challenges because they are listed twice on the verdict sheet

- iii. DISH: DISH's challenges based on class member identity (DISH's Proposed Question 6)
    - iv. DISH: DISH's IDNC based challenges (DISH's Proposed Question 7)
  - d. DISH: Inclusion of phone number/call counts on the verdict sheet
- 2. Joint: Jury instructions (any issues to be summarized in written submissions filed by December 8)
- 3. Joint: Supplemental jury voir dire questionnaire
- 4. Additional in limine motions
  - a. DISH: To redact portion of Exhibit KX2 mentioning running of a credit check on Dr. Krakauer
  - b. DISH: To exclude any reference to Nazi Germany by Dr. Krakauer
- 5. Joint: Stipulations
  - a. Regarding the total telephone number and call counts—manner in which this information will be made available to the jury
  - b. Plaintiff's proposed EBR stipulation
  - c. Regarding Dr. Krakauer's claims
- 6. Joint: Digital presentation and use of graphics
- 7. Joint: Dates for items to be exchanged or which require conferral (Joint)
  - a. Deposition designations
  - b. Pre-marked exhibits; joint exhibits
- 8. Joint: Presentation of evidence on the "willful and knowing" issue
  - a. Does plaintiff intend to present evidence relevant only to that issue?
  - b. If so, the plan for presentation of such evidence
- 9. DISH: Post judgment issues
  - a. Claims process

b. Reversion

10. DISH: Class Notice—defense concerns regarding compliance with class notice order

Respectfully submitted,

Dated: November 29, 2016

/s/ John W. Barrett

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 29, 2016, I electronically filed the above document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

By: /s/ John W. Barrett